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12 FACEBOOK, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 FACEBOOK, INC.,

Case No. 5:08-cv-05780 JF (RS)

18 Plaintiff,

**[PROPOSED] ORDER GRANTING
FACEBOOK INC.'S MOTION FOR
JUDGMENT ON THE PLEADINGS,
OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY
JUDGMENT OF LIABILITY UNDER
CALIFORNIA PENAL CODE §
502(C)**

19 v.

20 POWER VENTURES, INC. a Cayman Island
21 Corporation; STEVE VACHANI, an
individual; DOE 1, d/b/a POWER.COM,
22 DOES 2-25, inclusive,

23 Defendants.

Date: February 26, 2009
Time: 9:00 am
Judge: Hon. Jeremy D. Fogel
Courtroom: 3

1 The Motion of Facebook, Inc. ("Facebook") for Judgment On The Pleadings
 2 Pursuant To Federal Rule of Civil Procedure 12(c) or, in the alternative, for Summary Judgment
 3 Pursuant to Federal Rule of Civil Procedure 56 against Defendants Power Ventures, Inc. and
 4 Steven Vachani ("Power") came on for hearing on February 26, 2009, before the Honorable
 5 Jeremy D. Fogel;

6 The Court, having considered the papers filed in support of and in opposition to
 7 the motions, the arguments presented at the hearing and other matters relevant to the
 8 determination of these motions

9 Hereby finds and Orders as follows:

- 10 1. This Court has jurisdiction over the subject matter and the parties.
- 11 2. In its Amended Answer, Power has admitted facts sufficient to establish a
 violation of California Penal Code 502(c).
- 12 3. Facebook has alleged, and Power has admitted that:
 - 13 a. Facebook owns and operates the widely popular social networking
 website located at <http://www.facebook.com>.
 - 14 b. Before Facebook activates a username and permits a user access to
 certain features of the Facebook website, the user must agree to
 Facebook's Terms of Use, which set forth the acceptable terms of
 use of its computer network and prohibit users from conducting
 certain activities.
 - 15 c. Specifically, Facebook's Terms of Use require Facebook users to
 abide by certain rules of user conduct.
 - 16 d. In exchange for the free Facebook service, users agree that they will
 refrain from, among other things, soliciting personal information
 from anyone under 18 or soliciting passwords or personally
 identifying information for commercial or unlawful purposes; using
 or attempting to use another's account, service or system without
 authorization from Facebook, or creating a false identity on
 Facebook, using automated scripts to collect information from or
 otherwise interact with the Facebook website, impersonating any
 person or entity, or falsely stating or otherwise misrepresenting
 oneself, uploading, posting, transmitting sharing or otherwise
 making available any unsolicited or unauthorized advertising,
 solicitations, promotional materials, junk mail, spam, chain letters,
 pyramid schemes or any other form of solicitation, harvesting or
 collecting email addresses or other contact information from other
 users from Facebook, registering for more than one User account or
 falsely stating or otherwise misrepresenting oneself, and using

1 Facebook's website for commercial use without the express
2 permission of Facebook.

3

4. Power permits users to enter their account information to access the
Facebook site through Power.com.

5. Power has developed computer software and other automated devices and
programs to access and obtain information from the Facebook website for
aggregating services.

6. Power has copied and stored all the Facebook data files necessary to
display the Facebook website through the Power browser.

7. Power has at no time received permission from Facebook to represent that
solicitation of Facebook usernames and passwords was authorized or
endorsed by Facebook.

8. Power's accessing and subsequent "scraping" of Facebook data from
Facebook's servers constitutes knowing and impermissible or unauthorized
accessing of Facebook's servers.

9. Power's accessing and copying of Facebook data constitutes a "use" of that
data pursuant to California Penal Code 502(c).

10. Facebook's Terms of Use are enforceable as to registered users of the
Facebook website.

11. Use of Facebook's website in contravention of the Facebook Terms of Use
constitutes "impermissible" or unauthorized access and/or use of the
Facebook site within the meaning of California Penal Code 502(c).

12. Facebook is entitled to a permanent injunction pursuant to California Penal
Code Section 502(e)(1).

13. Facebook has expended resources combating Power's actions, as
demonstrated by its implementation of technological blocking measures
that Power has admitted to circumventing.

14. ACCORDINGLY, Facebook's Motion for Judgment On The Pleadings is
hereby GRANTED.

22 **IT IS THEREFORE ORDERED THAT:**

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15. Defendants Power Ventures, Inc. and Steven Vachani, and all of their
agents, successors, and assigns, and all other persons in active concert or
participation with any of them, are hereby PERMANENTLY
RESTRINED and ENJOINED from:

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a. soliciting and/or storing Facebook login information;

b. accessing or attempting to access Facebook's website and computer
systems;

c. displaying Facebook's trademark anywhere on their websites;

- d. engaging in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of Facebook's website; and
- e. engaging in any activity that violates Facebook's Terms of Use.

IT IS SO ORDERED.

Dated:

Honorable Jeremy Fogel
United States District Judge